

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JEREMIAH W. BALIK,

Plaintiff,

v.

CITY OF CEDAR FALLS, et al.,

Defendants.

Case No. 16-CV-04070-LHK

**ORDER DENYING MOTION TO
RECUSE, QUASHING ALL
SUBPOENAS, AND DISMISSING CASE
WITH PREJUDICE**

Re: Dkt. Nos. 10, 14, 16, 19, 21, 23, 29, 31,
32, 34, 40, 44, 45, 46, 51, 53, 54, 55, 61 &
62, 65

Plaintiff Jeremiah Balik (“Plaintiff”) brings this action against the City of Cedar Falls, Iowa; the City of San Jose, California; the City of Ventura, California; the City of Santa Clara, California; the Los Angeles County Sheriff’s Department; the Santa Barbara County Sheriff’s Department; the San Diego County Sheriff’s Department; and Next Generation Wireless (collectively, “Defendants”).

The crux of Plaintiff’s complaint is that Chicago Mayor Rahm Emanuel (“Emanuel”) and U.S. Congressman Fred Upton (“Upton”) have led a nationwide scheme to deter Plaintiff from pursuing his girlfriend, supermodel Samantha Hoopes (“Hoopes”). ECF No. 1 at 9. Emanuel,

Upton, and Hoopes are not parties in the instant action.

Before the Court is Plaintiff's motion to recuse, which Plaintiff filed on August 31, 2016. ECF No. 61 ("Mot."). Plaintiff also filed on August 31, 2016 a proposed subpoena to an unidentified Los Angeles Police Department officer and on September 1, 2016 a proposed subpoena to Instagram HQ. ECF Nos. 62, 65.

Having considered the motion and proposed subpoenas, the relevant law, and the record in this case, the Court DENIES Plaintiff's motion to recuse and QUASHES Plaintiff's two subpoenas. The Court also reiterates that the previous 18 subpoenas that Plaintiff filed in this action are QUASHED and are thus without any legal effect. Finally, the Court DISMISSES the instant action with prejudice.

I. BACKGROUND

On July 20, 2016, Plaintiff filed the complaint in this action. ECF No. 1. On this same date, Plaintiff also filed an application to proceed in forma pauperis. ECF No. 2.

On August 26, 2016, the Court denied Plaintiff's in forma pauperis application. The Court determined that Plaintiff was both (1) able to pay the \$400.00 fee to file a civil action in the Northern District of California and (2) that Plaintiff's complaint was factually and legally frivolous. ECF No. 58. On the issue of frivolousness, the Court explained that Plaintiff had "filed five other actions in federal courts in California. Like the instant case, the crux of these five actions has been that Emanuel and Upton have worked together to prevent or deter Plaintiff from pursuing his alleged girlfriend, Hoopes." *Id.* at 8. "In these five actions, Plaintiff provided no evidence of this nationwide scheme, and all five district courts found Plaintiff's claims to be meritless." *Id.* "Plaintiff likewise has pointed to no such evidence of a nationwide scheme by Emanuel and Upton in the instant case." *Id.*

In addition to denying Plaintiff's application to proceed in forma pauperis, the Court also noted that Plaintiff's complaint appeared to implicate issues of misjoinder and improper venue. Accordingly, the Court directed Plaintiff to contact Kevin Knestrick, the staff attorney for the

1 Federal Pro Se Program, to file an amended complaint “that cures its factual and legal
2 frivolousness and addresses the misjoinder, venue, and other issues raised” in the Court’s August
3 26, 2016 Order. *Id.* at 10.

4 The Court’s August 26, 2016 Order also denied Plaintiff’s motion for an injunction against
5 California Governor Jerry Brown and Plaintiff’s motion for an order of removal of a traffic ticket
6 that Plaintiff received in Santa Clara County. *Id.* at 11. The Court also quashed 18 proposed
7 subpoenas that Plaintiff had filed. These subpoenas, like Plaintiff’s complaint, were legally and
8 factually frivolous. *See id.* (describing subpoena directed to Piquito Mas Chatsworth, a Mexican
9 restaurant).

10 Finally, the Court noted that Plaintiff had “repeatedly attempted to set hearing dates on
11 motions and other matters without the Court’s permission or approval,” in violation of the Court’s
12 standing order. Moreover, Plaintiff had sent postcards and multiple emails daily to the Courtroom
13 Deputy and Clerk’s Office. Many of these communications were ex parte and addressed
14 substantive case matters, in violation of Civil Local Rule 11-4(c). *See* Civil L.R. 11-4(c) (“[A]n
15 attorney or party to an action must refrain from making telephone calls or writing letters or
16 sending copies of communications between counsel to the assigned Judge or the Judge’s law
17 clerks or otherwise communicating with a Judge or the Judge’s staff regarding a pending matter,
18 without prior notice to opposing counsel.”); *see id.* (allowing parties to contact Courtroom Deputy
19 solely for non-substantive scheduling matters).

20 The Court’s August 26, 2016 Order was not the first time that the Court had warned
21 Plaintiff that his actions violated the Civil Local Rules and the Court’s standing order—the Court
22 had already done so on three prior occasions.

23 Indeed, Plaintiff has repeatedly sent improper communications to the Courtroom Deputy
24 and Clerk’s Office ever since Plaintiff filed his case on July 20, 2016. Thus, on August 9, 2015,
25 the Court issued an order which stated that Plaintiff’s emails were ex parte communications and
26 that Plaintiff should contact the Courtroom Deputy only for non-substantive scheduling
27

1 communications. Moreover, any such contact must, consistent with the Civil Local Rules, include
2 opposing counsel.

3 Plaintiff did not comply with the Court's August 9, 2016 Order, and continued to send ex
4 parte communications daily to the Courtroom Deputy. Accordingly, on August 16, 2016, the
5 Court issued a second order reiterating that Plaintiff could not send ex parte communications to
6 the Courtroom Deputy, and that Plaintiff should only communicate with the Courtroom Deputy on
7 non-substantive scheduling matters. ECF No. 36 at 1.

8 Plaintiff continued to send improper emails to the Courtroom Deputy. The only apparent
9 change that Plaintiff made was to include Santa Clara City government officials on his emails to
10 the Courtroom Deputy. *See, e.g.*, ECF No. 42-1 at 2. The City of Santa Clara, although named as
11 a Defendant in Plaintiff's complaint, has not been served, and no counsel has appeared on the City
12 of Santa Clara's behalf. Moreover, Plaintiff's emails did not address non-substantive scheduling
13 matters, but instead were "substantive correspondences about case management." ECF No. 42 at
14 1. Accordingly, the Court issued a third order on August 23, 2016 which emphasized that
15 Plaintiff's "communications with the Courtroom Deputy should be limited in scope to non-
16 substantive scheduling communications that include opposing counsel." *Id.*

17 Notwithstanding the Court's August 9, 16, and 23, 2016 Orders, Plaintiff continued to send
18 the Courtroom Deputy improper emails. Thus, on August 26, 2016, the Court reiterated that
19 Plaintiff was "to only contact the Courtroom Deputy for non-substantive scheduling matters, and
20 to include opposing counsel on all such communications." ECF No. 58 at 13. Moreover, the
21 Court warned Plaintiff that "[i]f Plaintiff continue[d] to violate the Court's orders, the Court can
22 and will, in its discretion, dismiss this action with prejudice." *Id.* (citing *Ferdik v. Bonzelet*, 963
23 F.2d 1258, 1260 (9th Cir. 1992) ("[T]he district court may dismiss an action for failure to comply
24 with any order of the court.")).

25 **II. DISCUSSION**

26 **A. Motion to Recuse**

After acknowledging receipt of the Court's August 26, 2016 Order, ECF No. 59, Plaintiff continued to send the Courtroom Deputy improper emails. On August 28, 2016, for instance, Plaintiff sent the following email:

Gov. Brown/Santa Clara City Attny,
See you October 6th per motion hearing.
San Jose City Attorney, nothing wrong with my process service—made Sen
Feinstein aware of situation. See reply – plus Twitter post. Thanks
Respectfully submitted,

ECF No. 59-3. Plaintiff included the following email addresses in his August 26, 2016 email: richard.doyle@sanjoseca.gov, governor@governor.ca.gov, CityAttorney@santaclaraca.gov, lhkcrd@cand.uscourts.gov, claudia.ericksen@cco.sccgov.org, jlyons@sfchronicle.com, jltorders@caed.uscourts.gov, carson_niello@feinstein.senate.gov, BChoi@cityofsantacruz.com. None of these emails belong to parties in this case, and there is no October 6 motion hearing.

Next, on August 30, 2016, Plaintiff sent the following email:

https://en.m.wikipedia.org/wiki/Mariano-Florentino_Cuellar
Stacy this seems like a conflict to me, im at odds with President Obama. (he wrote a letter of recommendation for me) Additionally I'm not dating Samantha Hoopes per SBSC #15cv02604 & Rahm Emanuel & FRED Upton are implicated in LASC cases #15K05516 & #15K04655.
Perhaps a different Judge would be best. Thanks
Best,

Plaintiff included the following email addresses in his August 30, 2016 email:

lhkcrd@cand.uscourts.gov, gary_fisher@grassley.senate.gov, zachariah_beck@grassley.senate.gov. None of these emails belong to parties in this case.¹

On August 31, 2016, Plaintiff filed a motion to recuse the undersigned judge. ECF No. 61. Plaintiff states that he is prejudiced because the undersigned judge is married to a California Supreme Court justice, the undersigned judge has been nominated to the Ninth Circuit, and Plaintiff is connected with President Barack Obama, U.S. Senator Dick Durbin, and U.S. Senator

¹ Plaintiff has sent at least seven other improper emails since August 26, 2016. See ECF No. 59; ECF No. 63.

Charles Grassley. *Id.* at 2.

Plaintiff's motion to recuse is improper. First, the Court has denied Plaintiff's application to proceed in forma pauperis. In order to proceed with this case, Plaintiff was required to pay the \$400.00 filing fee. Plaintiff had not done so at the time Plaintiff filed the motion to recuse.² Thus, as a matter of law, Plaintiff could not have filed the motion to recuse when he did so. Second, Plaintiff's motion is without merit. Moreover, no member of the California Supreme Court is a party to this case, nor are President Obama, Senator Durbin, and Senator Grassley parties to this case. For all of these reasons, Plaintiff's motion to recuse is DENIED.

B. Subpoenas

In the Court's August 26, 2016 Order, the Court quashed all 18 proposed subpoenas that Plaintiff had filed. As the Court explained, these subpoenas were factually and legally frivolous. The subpoenas refer to the nationwide scheme orchestrated by Emanuel and Upton against Plaintiff. In a proposed subpoena to Instagram HQ, for instance, Plaintiff stated that "Samantha Hoopes posted photo could be construed as a 'Hate Crime' under California PC 422.55, although super model Samantha Hoopes was probably just an expression of her protected 'free speech' [clause] under the 1st Amendment – See Attachment 1." ECF No. 55 at 1; *see also id.* at 2 (Attachment 1, which reads that "Plaintiff was dating Samantha Hoopes – conspirators Mayor Rahm Emanuel and US Rep Fred Upton et al had Plaintiff locked out of Plaintiff's Instagram account and censored."). These proposed subpoenas also commanded parties to appear at the Court's courtroom on a particular date and time. The Court has never granted Plaintiff access to its Courtroom for subpoena-related matters.

In spite of the Court's August 26, 2016 Order, Plaintiff has continued to file frivolous subpoenas. On August 31, 2016, Plaintiff filed a proposed subpoena for an "unidentified Los Angeles Police Dept." officer. ECF No. 62 at 1. Plaintiff's proposed subpoena reads: "Did Mayor

² Plaintiff filed the motion to recuse on August 31, 2016. ECF No. 61. Plaintiff paid the filing fee on September 1, 2016. ECF No. 66.

1 Rahm Emanuel/Rep Fred Upton prompt officer to unlawfully patrol Plaintiff August 22nd, 2106
2 [sic] at or around 5 AM – 5:15 AM Topanga Canyon (27) and Roscoe Blvd? What was were you
3 doing early in AM?” *Id.* This August 31, 2016 subpoena requests that the party appear in this
4 Court’s courtroom on October 20, 2016, at 2:00 p.m. *Id.*

5 On September 1, 2016, Plaintiff filed another proposed subpoena, this time again to
6 Instagram HQ. ECF No. 65. This subpoena requests the party to “[s]end requested photo from
7 Samantha Hoopes IG archives.” *Id.* at 1. The subpoena also refers to the scheme by Emanuel and
8 Upton to deter Plaintiff from pursuing Hoopes. *Id.* at 2. The September 1, 2016 subpoena
9 requests that the party appear in this Court’s courtroom on October 20, 2016, at 2:00 p.m. *Id.*

10 Plaintiff’s August 31, 2016 and September 1, 2016 subpoenas, just like his previous
11 subpoenas, are frivolous and are therefore QUASHED. As with the other 18 subpoenas, the Court
12 has never granted Plaintiff access to the Court’s courtroom for subpoena-related matters. The
13 Court also reiterates that all proposed subpoenas in this case are QUASHED and are without legal
14 effect. *See* ECF Nos. 10, 14, 16, 19, 21, 23, 29, 31, 32, 34, 40, 44, 45, 46, 51, 53, 54, 55, 62, 65.

15 **C. Dismissal with Prejudice**

16 Finally, under Ninth Circuit precedent, “the district court may dismiss an action for failure
17 to comply with any order of the court.” *Ferdik*, 936 F.2d at 1260. “In determining whether to
18 dismiss a case for failure to comply with a court order, the district court must weigh five factors
19 including: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
20 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
21 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Id.* at
22 1260–61. As discussed below, these factors favor dismissal of this action with prejudice.

23 **1. Expeditious Resolution of Litigation**

24 As to the first factor, the expeditious resolution of litigation, Plaintiff has now filed six
25 lawsuits in federal district courts across California. All of these lawsuits allege a nationwide
26 scheme by Chicago Mayor Rahm Emanuel and U.S. Congressman Fred Upton to prevent Plaintiff
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1 from pursuing his super model girlfriend, Samantha Hoopes. Every court to have reviewed these
2 allegations has found them to be meritless.

3 In the instant case, the Court advised Plaintiff to file an amended complaint curing its
4 factual and legal frivolousness and addressing misjoinder, improper venue, and other issues. The
5 Court denied Plaintiff's various motions and quashed Plaintiff's proposed subpoenas, finding
6 these motions and subpoenas to be improper and meritless. The Court also instructed Plaintiff, on
7 four separate occasions, to cease sending the Clerk and the Courtroom Deputy emails in violation
8 of the Civil Local Rules and the Court's standing order. The Court invited Plaintiff to contact a
9 staff attorney at the Federal Pro Se Program to assist Plaintiff with this litigation. The Court's
10 actions have all sought to move this litigation forward in a judicious and efficient manner.

11 Plaintiff, however, has repeatedly failed to comply with the Court's rulings. Plaintiff has
12 continued to send emails to the Clerk and Courtroom Deputy which violate the Civil Local Rules
13 and the Court's standing order. Plaintiff has continued to file frivolous subpoenas—on August 31,
14 2016 and September 1, 2016, to an "unidentified Los Angeles Police Dept." officer and Instagram
15 HQ, respectively. Both of these subpoenas refer to the nationwide scheme allegedly organized by
16 Emanuel and Upton. Plaintiff has also filed a meritless motion to recuse the undersigned judge.
17 ECF No. 61. The foregoing actions, along with the numerous subpoenas and motions that
18 Plaintiff has previously filed, demonstrate that Plaintiff has thwarted the Court's efforts to
19 efficiently adjudicate this case.

20 **2. Docket Management**

21 Second, the Court's need to manage its own docket weighs strongly in favor of dismissal.
22 This is now at least the sixth time that a federal court has dedicated resources to addressing
23 Plaintiff's factually and legally frivolous claims. As the Ninth Circuit has noted, "[f]lagrant abuse
24 of the judicial process cannot be tolerated because it enables one person to preempt the use of
25 judicial time that properly could be used to consider the meritorious claims of other litigants." *De*
26 *Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990). It is clear that allowing Plaintiff to

proceed with this action would only result in additional abuse of the judicial process and take up valuable and scarce judicial resources.

Indeed, in the six weeks since Plaintiff filed the complaint in the instant case, Plaintiff has already filed 3 meritless motions and 20 meritless subpoenas. Plaintiff has already sent numerous emails, postcards, and other correspondence to the Clerk and Courtroom Deputy which violate the Civil Local Rules and the Court's standing order. The Court has warned Plaintiff on four separate occasions—on August 9, 16, 23, and 26, 2016—of Plaintiff's non-compliance with the Civil Local Rules and the Court's standing order. The Court expressly warned, on August 26, 2016, that continued non-compliance would result in a dismissal of this action with prejudice. Nevertheless, Plaintiff has continued to send the Courtroom Deputy improper correspondence, has continued to file meritless subpoenas, and has continued to file meritless motions. These filings tax the Court's time and divert the Court's attention from other matters. *Johns v. Town of Los Gatos*, 834 F. Supp. 1230, 1232 (N.D. Cal. 1993) (“[F]rivolous claims by a litigious plaintiff may be extremely costly to defendants and can waste valuable court time.”).

3. Risk of Prejudice to Defendants

Turning to the risk of prejudice to defendants, although Plaintiff paid the filing fee on September 1, 2016, no defendants have been served. Plaintiff has filed 20 proposed subpoenas. These subpoenas have prompted some third parties to file a response. *See* ECF No. 62 at 2 (response by Los Angeles Police Department); ECF No. 60 at 5 (response by San Jose City Attorney's Office); *id.* at 6 (response by San Diego County Sheriff's Department). It is burdensome for these parties to take time to respond to Plaintiff's factually and legally frivolous subpoenas. Accordingly, based on the record in this case, Defendants would likely have to respond to numerous frivolous filings should Plaintiff proceed with this case. Dismissal saves Defendants from spending time, energy, and resources addressing frivolous matters.

4. Public Policy Favoring Disposition of Case on the Merits

Fourth, the public policy favoring disposition of this case on the merits points towards

dismissal. The Court has urged Plaintiff to correct the deficiencies in his complaint, which include, at the very least: (1) factual and legal frivolousness, (2) misjoinder, (3) and improper venue. The Court has advised Plaintiff to reach out to the Federal Pro Se Program. The Court has informed Plaintiff that Plaintiff must comply with the Civil Local Rules and the Court's standing order. The Court has, in short, encouraged Plaintiff to cure the issues with his complaint, to work within the rules of this District, and to pursue whatever claims he might have on the merits.

Plaintiff, however, has ignored the Court's rulings. Plaintiff has repeatedly violated the Civil Local Rules, has repeatedly filed frivolous subpoenas, and has repeatedly filed frivolous motions. Nearly all of Plaintiff's filings with the Court and correspondences with the Courtroom Deputy and Clerk's Office involve a nationwide scheme led by Emanuel and Upton to prevent Plaintiff from pursuing his super model girlfriend, Hoopes. This Court and other courts have found such allegations to lack merit, yet Plaintiff has continued to pursue them without pause.

5. Availability of Less Drastic Measures

Finally, the Court has considered the availability of less drastic measures. Since this case was opened on July 20, 2016, the Court has issued four orders. These orders have admonished Plaintiff for violating the Civil Local Rules and the Court's standing order. The Court's August 26, 2016 order stated that Plaintiff's allegations were factually and legally frivolous; that there were a number of deficiencies with Plaintiff's complaint; and that failure to cure these deficiencies, failure to pay the \$400.00 filing fee, or failure to adhere to the Civil Local Rules or the Court's standing order would result in a dismissal of this action with prejudice. In addition, the Court expressly encouraged Plaintiff to reach out to Kevin Knestrick, a staff attorney at the Federal Pro Se Program, to receive legal assistance. Although Plaintiff has paid the filing fee, Plaintiff has continued to file meritless motions and frivolous subpoenas and has continued to violate the Civil Local Rules and the Court's standing order.

In sum, having considered the five factors set forth by the Ninth Circuit in *Ferdik*, the Court finds that dismissal of this action with prejudice is appropriate. The instant case is thus

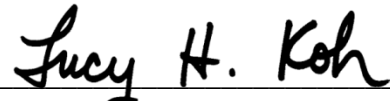
DISMISSED WITH PREJUDICE.

III. CONCLUSION

For the foregoing reasons, Plaintiff's motion to recuse, ECF No. 61, is DENIED. Plaintiff's 20 proposed subpoenas, ECF Nos. 10, 14, 16, 19, 21, 23, 29, 31, 32, 34, 40, 44, 45, 46, 51, 53, 54, 55, 62, 65, are QUASHED. The instant action is DISMISSED WITH PREJUDICE. The Clerk shall close the file. The Clerk shall not sign any proposed subpoenas in this closed case.

IT IS SO ORDERED.

Dated: September 1, 2016.



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California